

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF PUERTO RICO  
3  
4

OSVALDO MORALES-TORRES,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Civil No. 15-1293 (JAF)

(Crim. No. 12-95-4)

5  
6 **OPINION AND ORDER**

7 Petitioner Osvaldo Morales-Torres (“Morales-Torres”) comes before the court  
8 with a habeas corpus petition pursuant to 28 U.S.C. § 2255 to vacate, set aside, or correct  
9 the sentence we imposed in Criminal No. 12-95-4. (ECF No. 1.) For the following  
10 reasons, we deny his petition.

11 **I.**

12 **Background**

13 Morales-Torres pleaded guilty to conspiracy to commit robbery and firearm  
14 offenses. (Crim. No. 12-95-4, Docket Nos. 52, 53, 163.) For this, we sentenced him to a  
15 one-hundred-fourteen-month sentence. (Crim. No. 12-95-4, ECF No. 163.) He appealed  
16 his sentence to the First Circuit, which concluded that our “sentencing methodology was  
17 procedurally and substantively sound and that the district court did not abuse its  
18 discretion by imposing the sentence it did.” (Crim. No. 12-95-4, ECF No. 163.) The  
19 First Circuit affirmed our “reckless endangerment” enhancement pursuant to U.S.S.G.  
20 § 3C1.2. (Crim. No. 12-95-4, ECF No. 163.) The Court of Appeals’ judgment was

1 handed down September 15, 2014. (Crim. No. 12-95-4, Docket Nos. 163, 166.) Morales-  
2 Torres did not seek certiorari.

3 On March 24, 2015, Morales-Torres filed a motion to vacate, set aside, or correct  
4 his sentence under 28 U.S.C. § 2255. (ECF No. 1.) The United States filed a response in  
5 opposition. (ECF No. 4.)

## 6 II.

### 7 Jurisdiction

8 Morales-Torres is currently in federal custody, having been sentenced by this  
9 district court. To file a timely motion, Morales-Torres had one year from the date his  
10 judgment became final. 28 U.S.C. § 2255(f). His judgment became final on the last day  
11 that he could have filed a petition for a writ of certiorari, which was ninety days after the  
12 entry of the Court of Appeals' judgment. SUP. CT. R. 13(1); *Clay v. United States*, 537  
13 U.S. 522 (2003). The Court of Appeals entered judgment on September 15, 2014, and,  
14 therefore, Morales-Torres filed within the one-year time limit for a § 2255 petition.

## 15 III.

### 16 Legal Analysis

17 Morales-Torres argues that his plea agreement was breached and that his counsel  
18 was ineffective for failing to object to that breach. For the following reasons, these  
19 claims fail.

#### 20 A. Breach of the Plea Agreement

21 Morales-Torres alleges that the government breached his plea agreement because  
22 he was sentenced under a higher criminal history score than that which the government  
23 agreed to recommend. (ECF No. 1 at 4.)

1 Because Morales-Torres did not pursue this challenge on direct appeal, it was  
2 procedurally defaulted. *Bousley v. United States*, 523 U.S. 614, 621-22 (1998). “Where  
3 a defendant has procedurally defaulted a claim by failing to raise it on direct review, the  
4 claim may be raised in habeas only if the defendant can first demonstrate either cause and  
5 actual prejudice, or that he is actually innocent.” *Id.* at 622 (internal citations omitted).  
6 Morales-Torres does not argue that he is actually innocent. Likewise, he has failed to  
7 show cause why he did not raise this issue in his direct appeal, at the time when he  
8 appealed the imposition of the “reckless endangerment” enhancement. (*See* Crim.  
9 No. 12-95-4, ECF No. 163.)

10 However, even if this were not procedurally defaulted, his claim would fail. The  
11 plea agreement, signed by Morales-Torres, states that “[t]he parties do not stipulate any  
12 assessment as to the defendant’s Criminal History Category.” (Crim. No. 12-95-4, ECF  
13 No. 53 at 5.) Because the government made no promises regarding Morales-Torres’  
14 criminal history category, a breach is impossible.

15 **B. Ineffective Assistance of Counsel**

16 Morales-Torres alleges that he received ineffective assistance of counsel when his  
17 attorney failed to argue that his plea agreement had been breached. (ECF No. 1 at 5.) To  
18 prove this, Morales-Torres must show that both: (1) the attorney’s conduct “fell below an  
19 objective standard of reasonableness;” and (2) there is a “reasonable probability that, but  
20 for counsel’s unprofessional errors, the result of the proceeding would have been  
21 different.” *Strickland v. Wash.*, 466 U.S. 688-94 (1984). However, we have already  
22 found that the plea agreement was not breached. Therefore, it is impossible that the  
23 result would have been different had the attorney objected. Therefore, this claim also  
24 fails.

We grant a COA only upon “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To make this showing, “[t]he petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). While Petitioner has not yet requested a COA, we see no way in which a reasonable jurist could find our assessment of his

1 constitutional claims debatable or wrong. Petitioner may request a COA directly from  
2 the First Circuit, pursuant to Rule of Appellate Procedure 22.

3 **V.**

4 **Conclusion**

5 For the foregoing reasons, we hereby **DENY** Morales-Torres' § 2255 motion  
6 (ECF No. 1). Pursuant to Rule 4(b) of the Rules Governing § 2255 Proceedings,  
7 summary dismissal is in order because it plainly appears from the record that Morales-  
8 Torres is not entitled to § 2255 relief from this court. We also **DENY** Morales-Torres'  
9 motion for default entry. (ECF No. 5.)

10 **IT IS SO ORDERED.**

11 San Juan, Puerto Rico, this 20th day of July, 2015.

12 S/José Antonio Fusté  
13 JOSE ANTONIO FUSTE  
14 U. S. DISTRICT JUDGE